IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 941 OF 2001

Ramesh Kimatrai Dudhani .. Petitioner

versus

Juhu Supreme Shopping Centre Premises Cooperative Scty Ltd & ors .. Respondents

Mr Rajshekhar Govilkar for Petr.
Mr Aslam Khan for Respt no.1
Mr A.K.Bhowmick for Respt no.2

CORAM : D.G. KARNIK, J

DATED : 20th June 2005.

P.C.

1. Heard learned counsel for the parties. By this petition the petitioner challenges the judgment and order dated 13th March 2001 passed by the learned Member, Maharashtra State Cooperative Appellate Court, Mumbai dismissing the petitioner's Appeal No.30 of 2000.

2. The petitioner is the husband of the respondent no.2 who is a member of the respondent no.1

cooperative housing society. By reason of her being a member the respondent no.1 has allotted to the respondent no. 2 one shop bearing shop No.11 and a garage in the property of the society. According to the petitioner he along with the respondent no. 2 made an application to the respondent no.1 society for admitting the petitioner as a joint member of the society. Though the word joint member was used in the application it appears that the application was for admitting the petitioner as an associate member as defined in section 2 (19) (b) of the Maharashtra Cooperative Societies Act, 1960 (for short the Act). The respondent no. 2 has denied to have made any such application and has contended that her signature on the application has been forged. The respondent no. 1 society informed the petitioner that his application for joint membership could be considered as he had not produced the original share certificates which was deposited with the State Bank of India as a security for a loan.

3. As the respondent no. 1 society declined to admit the petitioner as a member of the society,

the petitioner filed a dispute in Cooperative Court, purportingly under section 91 of the Act. In the said dispute he prayed for a declaration that he should be declared to be the joint member of the respondent no 1 society and further prayed that the respondent no. 2 be restrained by an injunction from interfering with his use and occupation of the shop and the garage in the society allotted to her. Both the respondents resisted the petitioner's claim for the reliefs mentioned above. The respondent no.2 raised an objection to the jurisdiction of the Cooperative Court to entertain and try the dispute under section 91 of the Act and requested the Court to hear and decide it as a preliminary issue. By a judgment and order dated 13th December, 1999 the Cooperative Court held that the petitioner was not a member of the respondent no. 1 society and therefore the dispute between him and on the one hand and the society or the respondent no.2 on the other hand could not be regarded as a dispute between a member and a society or between a member and a member and therefore it had no jurisdiction to entertain it under section 91 of the Act. On appeal, by an order dated 30th March, 2001 the

Cooperative Appellate Court confirmed the decision of the Cooperative Court for substantially the same reasons. That judgment is impugned in this writ petition.

4. Having heard learned counsel for the parties I am satisfied that the present dispute essentially is a dispute between the petitioner and the respondent no. 2 (who are the husband and wife) regarding the ownership of the shop and the garage in the respondent no. 1 society. That is the pith and substance of the dispute. It is not the dispute between the member and the society or the member and another member regarding the ownership of any premises in the society. Admittedly, the respondent no.2 was the original member. According to the petitioner alongwith the respondent no. 2 had made an application for being admitted as joint member (associate member) with the respondent no.2. The respondent no. 2 denied this and has contended that her signature is forged. The respondent no.1 society has never admitted the petitioner as a member of the society and informed him that his application could not be considered as it was not accompanied by the original share certificate which

was lodged with the State Bank of India as a security for a loan. Whether the society was right in rejecting the petitioner's application for membership on the ground that it was not accompanied by the share certificate is not the subject matter of this dispute. The issue of membership of the petitioner itself is not proved at the threshold. The trial court was therefore right in coming to the conclusion that the dispute before it was not a dispute between a member and a society or a member and a member but it was a dispute between a non member husband and the member. The appellate court has rightly confirmed the decision of the trial court.

5. In my view, the Cooperative Court could not have entertained the present dispute which was not a dispute between a member and a member or a member and the society. The Courts below were right in holding that the Cooperative Court had no jurisdiction to entertain and try the dispute. For these reasons, petition is dismissed with costs. Rule is discharged with costs. Interim orders, if any, stand vacated.

6. At the request of the learned counsel for the petitioner operation of this order is stayed for a period of two weeks.

D.G.KARNIK, J